



STATE OF DELAWARE
JUSTICE OF THE PEACE COURT NO. 13
1010 CONCORD AVENUE
CONCORD PROFESSIONAL CENTER
WILMINGTON, DELAWARE 19802

TELEPHONE: (302) 577-2550

SYSTEM ID: @3324
WILMINGTON HOUSING AUTHORITY
400 N. WALNUT STREET
WILMINGTON DE 19801

VS.

Civil Action No.: JP13-17-003491

SYSTEM ID: @2950857
REESE MASON
309 WEST 18TH STREET
APT 409
WILMINGTON, DE 19802

Appearances:

Plaintiff Wilmington Housing Authority, represented by and through Curtis J. Crowther, Esq.
Defendant Reese Mason, represented by Olga K. Beskrone, Esq.

Before: Lee, D.C.M.; Ross, J.; Hanby, J.

Heard: June 28, 2017
Decided: July 14, 2017

**ORDER OF JUDGMENT
ON TRIAL DE NOVO**

This case was originally a summary possession action brought by Plaintiff Wilmington Housing Authority (WHA) against Defendant Reese Mason on March 20, 2017. The case was heard before a single Judge (Ferrell, J.) on May 1, 2017 and a judgment was entered for a dismissal without prejudice. Plaintiff objected to the ruling and appealed to a three-judge panel. Trial de Novo was held on June 28, 2017. Deputy Chief Magistrate Lee, Judge K. Ross and Judge J. Hanby constituted the panel. This written order memorializes the decision announced in open court following trial.

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FACTUAL BACKGROUND

Defendant Mason, a tenant of WHA, rented an apartment located at 309 West 18th Street, Apt. 409, Wilmington, Delaware. Plaintiff argued the Defendant is in breach of his lease agreement dated April 21, 2009, and Lease Addendum dated November 18, 2015, Section XIV, Article A-1, by failing to pay rent payments when due. Witness Jawanna Patton, property manager, testified that Defendant's rent payments changed to \$272.00 effective January 1, 2016. She further testified that Defendant has not paid any rent since October 2016. On February 27, 2017, a 14-day Notice was sent listing the amount of unpaid rent and late fees from November 2016 through February 2017. The total amount demanded was \$1130.40. The Defendant was advised if the amount demanded was not paid within fourteen (14) days from the date of the notice, his lease would be terminated. The notice also advised Defendant that he could request a grievance hearing within ten (10) days from the receipt of the notice, but he did not do so. Plaintiff provided the following documentary evidence to support their claim: Lease Agreement, Parts 1 & 2; Lease Addendum; 14-day letter; tenant ledger; breakdown sheet.

Defendant acknowledged that the monthly rent was \$272.00. Defendant testified that he attempted to pay November's rent, but the money was refused by Ms. Patton's assistant Abigail because of a separate summary possession case filed due to an altercation between he and another tenant. This altercation left Defendant with minor head injury. Defendant admits that he has not paid rent since October, because he did not believe it would be accepted. Defendant testified he no longer has the money to pay the rent at this time because his nephew stole money from his bank account. Although the Defendant knew his nephew took the money, he declined to press charges.

After considering the testimony and evidence presented by both parties, the Court finds by a preponderance of the evidence in favor of Plaintiff for unpaid rent, late fees and possession. However, the Court finds Defendant's un rebutted testimony that his November rent payment was rejected by an agent for WHA, to be credible. The fact that there were two open summary possession cases against the Defendant within the same time period could have led to the confusion regarding acceptance of the rent payment. Additionally, Defendant suffered physical injury in October that affected his mental status. Consequently, the Court believes the facts of this case support a finding of a good faith dispute pursuant to 25 Del. C. §5716 which states:

§5716 Stay of proceedings by tenant; good faith dispute.


When a final judgment is rendered in favor of the plaintiff in a proceeding brought against a tenant for failure to pay rent and the default arose out of a good faith dispute, the tenant may stay all proceedings on such judgment by paying all rent due at the date of the judgment and the costs of the proceeding or by filing with the court an undertaking to the plaintiff, with such assurances as the court shall require, to the effect that defendant will pay such rent and costs within 10 days of the final judgment being rendered for the plaintiff. At the expiration of said period, the court shall issue a warrant of possession unless satisfactory proof of payment is produced by the tenant.

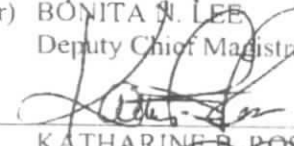
As stated previously, the Court announced in open court that Defendant must pay the Plaintiff

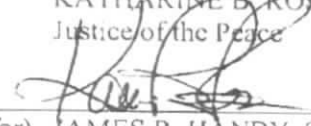
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\$2314.30, representing all rent and costs through 6/30/17, by July 8, 2017. If this amount is paid, possession will remain with the tenant. If the amount is not paid in full by the stated date, the landlord may request a writ of possession without further court hearing.

IT IS SO ORDERED this 14th day of July, 2017


(for) BONITA N. LEE
Deputy Chief Magistrate


KATHARINE B. ROSS
Justice of the Peace


(for) JAMES R. HANBY, SR.
Justice of the Peace



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